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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1070 OF 2007

M/s. Continental Traders ... Petitioner

Versus

Union of India and Ors. ... Respondents

Mr. M.R. Bhaya i/by Nankani & Associats for Petitioner.

Mr. M.I. Sethna, Sr. Advocate with Mrs. S.V. Bharucha for Respondents.

CORAM: F.I. REBELLO &
J.P.DEVADHAR,JJ.
DATED: 19TH JULY,2007

P.C.:

. Rule. Heard forthwith.

. It is the case of the Petitioners that the appeal preferred by them was disposed of on 20.10.2003. The tribunal came to the conclusion that the penalty imposed cannot be sustained. Subsequent thereto the Deputy Legal Adviser vide communication dated 4.6.2004 addressed to the Deputy Director of Enforcement brought to his attention that the order passed by the appellate tribunal has been reviewed and accepted. It is further set out that Rs. 18 lakhs was not involved in contravention and the same may be released only after obtaining fresh NOC from the Income tax authorities.

. It is the case of the respondents that they have been sending communication to the income tax authorities but they have received only instruction that the matter has been kept in abeyance.

. A period of over three years has already expired since the order of the tribunal. The department itself on 4.10.2004 arrived at the conclusion that they would not challenge the order of the tribunal. Considering that in our opinion, the question of holding on the money any further would not arise. It is always open to the Income tax authorities if in law they are entitled to take any steps to take such steps.

. Considering the above we direct respondents to release the said amount within the period of two weeks from today.

. In so far as the issue of interest is concerned, we do not propose to decide the same in this Petition. It will be open to the Petitioner to take such steps in law including filing a suit.

. Rule made absolute accordingly. There shall be no order as to costs.

(J.P.DEVADHAR, J.) **(F.I.REBELLO, J.)**